IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 356 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARTI CELLULAR LIMITED

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 356 of 2003

MR SAMIR U SHAH for Petitioner No. 1-3

MS MANISHA L SHAH Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 29/07/2003

ORAL JUDGEMENT

Heard ld. Senior Advocate Mr. PM Thakkar for the petitioners and Ms. Shah ld. APP for the respondent-State.

Rule. Ms. Shah ld. APP waives service of rule on behalf of respondent-State. At the request of the ld. advocates, the rule was heard finally.

This revision application is filed against an order passed by the ld. Metropolitan Magistrate, Ahmedabad on 7.3.2003 in Criminal Case No. 71/2003 by which the present petitioners no. 2 and 3 are directed to be served with bailable warrant of Rs. 5000/-.

The facts indicate that the complaint i.e. Criminal Case No. 71/2003 came to be filed against the present petitioners by the complainant Telecom Regulatory Authority of India for the charges under sec. 29 and 30 of The Telecom Regulatory Authority of India Act, 1997 (T.R.A. Act, 1997). On receiving the complaint and after registering the same, ld. Metropolitan Magistrate was pleased to issue summons against the present petitioner no. 1 and bailable warrant against the present petitioners no. 2 and 3 because all the three were accused in the above said Criminal Case No. 71 of 2003. The grievance in this revision application is expressed to the extent only that the order of ld. Metropolitan Magistrate issuing bailable warrant on a complaint triable as summons case is illegal.

Section 204 of the Code of Criminal Procedure makes it amply clear that by virtue of sub-section:(1)(a) of the said section 204, in summons case the Magistrate shall issue summons for the attendance of the accused. However, inspite of the above clear legal position, upon filing of the said complaint before the court, bailable warrant came to be issued by the ld. Metropolitan Magistrate against the present petitioner no. 2 - Rajan Bharti Mittal and petitioner no. 3- Shri Narendra Gupta.

In view of the above and in view of the clear above said legal position, the order impugned in this revision application is required to be revised to the extent that the issuance of bailable warrant against the ori. accused no. 2 and 3 - present petitioner no. 2- Rajan Bharti Mittal and petitioner no. 3 - Narendra Gupta in revisional jurisdiction of this court, is converted into issuance of summons.

In the above view of the matter, the order impugned in this revision application issuing bailable warrant against the ori. accused no. 2 and 3 is quashed and revised to the extent that the ori. accused are issued with the summons in place of bailable warrant.

Accused no. 2 and 3 will be allowed to appear before the Ld. Metropolitan Magistrate through pleader or advocate as per the law in response to the summons as issued to them as aforesaid.

This revision application is allowed to the aforesaid extent and disposed of accordingly. Rule is made absolute to the aforesaid extent only. DS Permitted.

(J.R. VORA, J.)
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